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7 **UNITED STATES DISTRICT COURT**  
8 **NORTHERN DISTRICT OF CALIFORNIA**  
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11 ABANTE ROOTER AND PLUMBING,  
12 INC., individually and on behalf of all others  
similarly situated,

13 Plaintiff,

14 v.

15 TOTAL MERCHANT SERVICES, LLC, a  
16 Delaware limited liability company,

17 Defendant.  
18

Case No. 3:19-cv-05711-EMC

**JOINT CASE MANAGEMENT  
STATEMENT**

19 Plaintiff Abante Rooter and Plumbing, Inc. (“Plaintiff” or “Abante”) and Defendant Total  
20 Merchant Services, LLC (“Defendant” or “TMS”) (collectively Plaintiff and Defendant are  
21 referred to as the “Parties”) submit this Joint Case Management Statement in accordance with the  
22 Court’s March 25, 2020 Order (dkt. 38).

23 **1. Discovery Status**

24 Plaintiff’s Statement: On December 23, 2019, Plaintiff served its First Set of Discovery  
25 Requests on Defendant—including Interrogatories and Requests for Production. On February 5,  
26 2020, TMS served its responses to Plaintiff’s First Set of Discovery Requests. On February 20,  
27 2020, Plaintiff served a discovery dispute letter, which addressed deficiencies in TMS’s  
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1 responses. The Parties then conferred regarding TMS's responses and TMS agreed to supplement  
2 its responses. On March 30, 2020, TMS provided its supplemental responses to discovery. At this  
3 time, TMS withheld all responsive documents citing the need for protective order. On April 3,  
4 2020, the Court issued an Order granting the Parties' Stipulated Protective Order. (Dkt. 42.) TMS  
5 produced documents on June 18, 2020.

6 Also on December 23, 2019, TMS served its First Set of Discovery Responses on  
7 Plaintiff—including Interrogatories and Requests for Production. Plaintiff served its responses to  
8 TMS's discovery on February 5, 2020. Thereafter, the Parties conferred and Plaintiff agreement  
9 to supplement its responses. On April 23, 2020, Plaintiff provided its supplemental responses to  
10 TMS's discovery requests.

11 On May 19, 2020, Plaintiff served its Second Set of Discovery Requests—including  
12 additional Interrogatories and Requests for Production. TMS's responses are not due until June  
13 19, 2020. Shortly thereafter, on May 29, 2020, the Parties' conferred regarding TMS's  
14 supplemental responses to Plaintiff's First Set of Discovery Requests. Currently, the Parties are at  
15 issue with respect to the sufficiency of TMS's responses. Plaintiff expects to file a Joint Letter  
16 regarding the discovery dispute within a matter of days.

17 During this time, Plaintiff has worked to effectuate subpoenas directed to Triumph  
18 Merchant Solutions, LLC ("Triumph"). Plaintiff has identified Triumph as one of the entities  
19 which placed calls at issue in this case (Plaintiff alleges these calls were placed on TMS's behalf  
20 and for TMS's benefit). TMS has asserted that any calls related to Triumph would have been  
21 placed by Triumph and not by TMS itself, and therefore all of the relevant call records regarding  
22 calls placed by Triumph are within Triumph's possession. On February 4, 2020, Plaintiff issued a  
23 Subpoena to Testify at a Deposition in a Civil Action and a Subpoena to Produce Documents,  
24 Information, or Objects or to Permit Inspection of Premises in a Civil Action ("Triumph  
25 Subpoenas"). The Triumph Subpoenas were served on Triumph on February 13, 2020. Triumph  
26 has refused to respond to the subpoenas in any fashion. Triumph also ignored Plaintiff's counsel's  
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1 repeated attempts to communicate regarding the subpoenas. As a result of Triumph's failure to  
2 respond, Plaintiff filed a subpoena enforcement action in the Southern District of California. (*See*  
3 *Abante Rooter and Plumbing, Inc. v. Triumph Merchant Solutions, LLC*, Case No. 3:20-cv-  
4 00754-JAH-BLM (S.D. Cal. filed April 21, 2020)) Currently, Triumph has ignored the  
5 enforcement action as well, and Plaintiff is awaiting an Order from the court. (*See id.*)

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7 Defendant's Statement: On December 23, 2019, TMS served its First Set of  
8 Interrogatories and First Set of Requests for Production (collectively, the "First Set of  
9 Discovery") on Plaintiff. Upon agreement of the parties, Plaintiff served its response to the First  
10 Set of Discovery on February 5, 2020—one (1) day after Plaintiff issued subpoenas to an entity  
11 referred to as Triumph Merchant Solutions, LLC. Plaintiff's response to the First Set of Requests  
12 for Production contained purported emails between Plaintiff and Triumph, who is not a party to  
13 this case, in relation to the alleged telemarketing activity of Triumph at issue in this litigation. *See*  
14 *Abante000418 through Abante000454*. Notwithstanding the production of certain documents,  
15 Plaintiff's response to the First Set of Discovery was deficient in multiple respects. As such, the  
16 parties engaged in a discovery conference to address the Plaintiff's deficient responses in lieu of  
17 Court intervention, which discovery conference resulted in Plaintiff serving supplemental  
18 discovery responses on TMS. Plaintiff's supplemental discovery responses further identified  
19 Triumph as the party that Plaintiff believes placed the alleged calls at issue. For reasons unknown  
20 to TMS, Plaintiff chose not to include Triumph as a named party in this litigation despite Plaintiff  
21 being fully aware of the existence, identity, and alleged conduct of Triumph concerning the  
22 claims asserted in this litigation.

23 On December 23, 2019, Plaintiff served its First Set of Interrogatories and First Set of  
24 Requests for Production (collectively, "Plaintiff's First Set of Discovery") on TMS. Plaintiffs'  
25 First Set of Interrogatories were replete with objectionable content. Upon agreement of the  
26 parties, TMS served its response to Plaintiff's First Set of Discovery on February 5, 2020.

1 Because Plaintiff neither alleged its telephone numbers that received the alleged calls at issue nor  
2 produced documents in response to TMS' First Set of Requests for Production at the time TMS  
3 served its responses to Plaintiff's First Set of Discovery, TMS lacked knowledge and information  
4 sufficient to substantively respond to the objectionable Plaintiff's First Set of Discovery. Plaintiff  
5 served TMS with a written correspondence to address Plaintiff's beliefs and concerns regarding  
6 the TMS response on February 20, 2020. Of importance, Plaintiff's correspondence further  
7 identified Triumph Merchant Solutions as one of two alleged agents responsible for the calls at  
8 issue (the other alleged agent being Quality Merchant Services, Inc. with whom TMS does not  
9 maintain a relationship) and Plaintiff acknowledged "Plaintiff has produced documents  
10 demonstrating that Triumph Merchant Solutions placed calls to Plaintiff on behalf of TMS." As a  
11 result of the discovery conference between the parties concerning Plaintiffs' First Set of  
12 Discovery and the documents produced by Plaintiff in response to TMS' First Set of Discovery,  
13 TMS served its supplemental responses to Plaintiff's First Set of Discovery on Plaintiff. TMS has  
14 produced the documents in its possession concerning Triumph as TMS\_000001 through  
15 TMS\_000050.

16 On May 19, 2020, Plaintiff served its Second Set of Interrogatories and Second Set of  
17 Requests for Production (collectively, "Plaintiff's Second Set of Discovery") on TMS. This Joint  
18 Case Management Statement is being filed prior to the time in which TMS is to respond to  
19 Plaintiff's Second Set of Discovery.

## 20 21 **2. Settlement Efforts**

22 The Parties are discussing a mediation session overseen by Peter J. Grilli P.A to occur  
23 remotely due to the ongoing pandemic on July 22, 2020 or July 23, 2020.

## 24 25 **3. Proposed Modifications To Current Schedule**

26 Plaintiff's Position: Plaintiff requests a brief 90-day extension of all remaining deadlines.  
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The Parties are currently engaged in a discovery dispute regarding Defendant's responses to Plaintiff's first set of discovery requests. A joint letter regarding the dispute will be filed in a matter of days. Further, Plaintiff also filed a subpoena enforcement action pending against in Triumph. Triumph has continued to completely ignore Plaintiff's subpoenas as well as the enforcement action. As a result of pending disputes, Plaintiff believes that a 90-day extension is warranted to permit the Parties additional time to resolve the disputes prior to scheduling depositions and proceeding to class certification.

Defendant's Position: Defendant takes no position on a 90-day extension of all remaining deadlines.

Dated: June 18, 2020

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Dated: June 18, 2020

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**SIGNATURE CERTIFICATION**

Pursuant to Civil L.R. 5-1(i)(3) of the Electronic Case Filing Administrative Policies and Procedures Manual, I hereby certify that the content of this document is acceptable to counsel for Defendant and that I have obtained authorization to affix his or her electronic signature to this document.

By: /s/ Patrick H. Peluso  
Patrick H. Peluso

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above papers was served upon counsel of record by filing such papers via the Court's ECF system on June 18, 2020.

/s/ Patrick H. Peluso